BOOK REVIEWS

THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL, 1817-1917. (Boston: The Harvard Law School Association, 1918, pp. x, 412.)

If one may paraphrase the famous dictum of Mr. Justice Holmes and say that the life of legal education is not logic but experience, then this Centennial History of the Harvard Law School is an authoritative guide for institutions which train lawyers. But it is more than this it is an epic of educational achievement. There have always been great names at Harvard. In the early days when few American Universities gave instruction in law, the treatises of Story, Greenleaf, Parsons and Washburn—presented first to Harvard students as lectures—made their authors famous. But the professors in those days were greater as authors than as teachers and it was not until 1870, with the appointment of Langdell, that the Harvard Law School began the great experiment with the case system which aroused so much bitter discussion and has now come to dominate legal education.

This Centennial History gives the chief facts with regard to the experiment, but does not, at this day, either argue the point or go into any of the discussions. The volume simply says that "the only final answer to such attacks is the success of the method in actual use, as shown by the record in practice of students trained under it. A list of such students who have attained distinction in various branches of the profession is a sufficient defense of the method." These lists are given in the History and they are nothing if not imposing. The influence of the Harvard Law School has extended to the bar of every state and, on the basis of professors of law listed as trained under the case system, well nigh controls American legal education at the present time. A bibliography of more than two hundred titles gives the inquiring student ample references to the discussions which followed Langdell's innovation.

Perhaps the most interesting part of this volume will be found in the Appendix which gives the lives of Harvard Law School teachers and a bibliography of their legal writings. Langdell, Ames, Thayer, Gray, Keener, Jeremiah Smith—these, to mention only the great dead, are names to conjure with, and their biographies must fascinate those who are interested in legal education or the development of legal science. And the amazing thing is that these men were able to combine good teaching—and in many cases active practice—with productive scholarship. The range of their legal interests is remarkable and they must have good use of every minute to find time for so many and so difficult scientific researches. All must have agreed with John Chipman Gray who said:

"Some of my colleagues in the College (none in the Law School, I have never heard such things there) are in the habit of lamenting that they have so much of the drudgery of teaching that they have no time for original research. They have never won much pity from me. They are like the English officer who said that the army would be a very

good profession for a gentleman were it not for those damned soldiers. A teacher who has not allowed his wits to be dulled by routine will find plenty of matter for research in his daily work."

Although this history deals principally with the past, hopes for the future are set forth. When, in 1817, Harvard began instruction in law, there was intense uncertainty in, and dissatisfaction with, the administration of justice; in 1917 there was somewhat the same distrust of law and lawyers and this has been intensified by the events of the war. During the early part of the nineteenth century, academic exposition in great treatises made the English common law available to the American lawyer and influenced judicial decisions. Now the continuity of the English tradition is again threatened by the development of administrative law: public utilities, legislation and workmen's compensation acts cannot be reconciled with the established principles. Collective bargaining may make necessary a revision of the theory of juristic personality which has been taken for granted by Anglo-American law and, until recent years, rarely questioned. The results of administrative experience in these matters must be stated in legal principles. This is the task of the law teacher, for practitioners and courts will be helpless without his aid. The reform of criminal law and procedure; the reorganization of the courts, and the improvement of legislative methods call for special training so that the coming generation of lawyers will be fitted to deal with these problems.

"We may look, therefore," the History says, "for a natural and gradual development of the School along lines upon which it has already begun, holding fast to its traditional policy of not attempting all things, but instead attempting a few things of the highest moment and doing them as well as possible. Thus the regular dogmatic instruction will change from time to time with the progress of the law. Much that we have had to teach in the past is already yielding in importance to new elements in the legal system. Much of our nineteenth-century law will presently be as obsolete as the learning of real actions and of the feudal law of estates in land which held so large a place in the curriculum of the Law School a century ago, or the elaborate and involved procedural law which was so important fifty years later, or the pedantic law of bailments which has given way to a modern doctrine of the obligations of public service. Such changes have gone on from time to time during the whole history of the School. More significant will be the development of graduate instruction and the fertilizing of the everyday professional teaching by ideas developed therein, and by research, as the teachers give part of their time to the ordinary professional courses and part to graduate instruction and to research. Thus adequate provision will be made for jurisprudence, philosophy of law, comparative law, theory of legislation, administrative law and criminology, without yielding to the fallacious notion that no one may be expected to know anything unless he has had a formal 'course' in it. Thus also more solidity will be given to the work of research and to graduate instruction. The one will grow naturally out of problems raised by study and teaching of the everyday law; the other will be

given definiteness by the connection with concrete applications. Again, the teacher and investigator will be under the pressure of having to argue out his theories with students thoroughly trained in the dogmatic law, and this will make for clearer and better thinking in the purely theoretical courses. Above all, however, the teaching of the ordinary professional courses will be fertilized. The theoretical courses will make themselves felt in each dogmatic course. Each set will react upon the other, so that if the one will be rendered more exact and solid, the other will be made more scientific and liberal."

LINDSAY ROGERS

CONSTITUTIONAL POWER AND WORLD AFFAIRS, by George Sutherland. (New York: Columbia University Press, 1919, pp. 202.)

Book reviewers are in need of a table in which, under the appropriate heading and subheading, they could discover the sort of volume that an author, with certain attainments, might be expected to produce. In the present case, Mr. Sutherland was the Blumenthal Lecturer before Columbia University; he has been President of the American Bar Association, and served two terms in the United States Senate. But there is no *index librorum* to suggest what kind of book might reasonably be expected.

It certainly differs from volumes which have previously come from the Blumenthal Foundation: President Wilson's *Constitutional Government in the United States,* Professor Ford's *The Cost of Our National Government,* or Senator Williams' *Thomas Jefferson.* Mr. Sutherland's exposition is frequently *cliché* and there is little attempt to do more than summarize what courts and writers on the Constitution have said about the problem discussed. Fortunately, the style of the usual presidential address before the American Bar Association is seldom apparent, but the lectures contain evidences of the manner which is commonly said to be frequent in the British Parliament: that of saying a perfectly obvious thing with impressive verbal gestures.

The lectures discuss most of the points that must be mentioned in any complete outline of the authority of the Federal Government over foreign affairs and such a discussion is at this time very valuable and timely. Mr. Sutherland gives his views, which, with a few exceptions are orthodox, concerning the origin and extent of the constitutional authority. The nature, basis, distribution, extent and limitations of the war powers are fully considered, and the treaty-making prerogative is stated to be unlimited by any reserved rights of the states, so long as the treaty relates to a matter that is properly the subject of international negotiation.

Two very important subjects, however, are barely discussed, and they are, at the present time, the most vital in connection with the power over foreign relations. What are the limits of the President's power of negotiation in connection with the power of the Senate to ratify, and is it possible for the Federal Government to enforce treaties, even though it has no such general legislative authority and must enter